

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.

CBS CORPORATION,  
SPC RESIDUAL, LLC, and  
DONALD R. WISHARD O/B/O THE  
ESTATE OF SARAH A. CULP,

Defendants.

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**CONSENT DECREE**

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**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606, 9607, as amended, ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Shriver's Corner Superfund Site in Straban Township, Adams County, Pennsylvania ("the Site").

B. The defendants that have entered into this Consent Decree ("Settling Defendants" and "Owner Settling Defendant") do not admit any liability to

Plaintiff arising out of the transactions or occurrences alleged in the complaint. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any claim asserted by the Settling Defendants or Owner Settling Defendant.

C. The United States, Settling Defendants, and Owner Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants and Owner Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants and Owner Settling Defendant waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants and Owner Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, upon Settling Defendants and their heirs, successors and assigns, and upon Owner Settling Defendant and its heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants and Owner Settling Defendant under this Consent Decree.

#### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

b. "Consent Decree" shall mean this Consent Decree and Appendix A. Appendix B, "Easement and Declaration of Restrictive Covenants," is an agreement solely between Owner Settling Defendant and Settling Defendant CBS Corporation ("CBS"), and the United States is not a party to that agreement. The Easement and Declaration of Restrictive Covenants is attached solely to facilitate enforcement of its terms and conditions by Settling Defendant CBS, if necessary. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "Easement" shall mean the Easement and Declaration of Restrictive Covenants attached to this Consent Decree as Appendix B. The Easement is an agreement solely by and between Owner Settling Defendant and Settling Defendant CBS. The United States is not a party to the Easement.

f. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "EPA Future Response Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the United States incurs at or in connection with the Site after the date of lodging of this Consent Decree.

j. "EPA Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

k. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

l. "Matters Addressed" shall mean EPA Past Response Costs, Settling Defendant Past Response Costs, Settling Defendant Future Response Costs, and the implementation of institutional controls as set forth in Section XI. As to the Settling Federal Agencies, Matters Addressed shall also include EPA Future Response Costs, but shall not include any potential future claims of Owner Settling Defendant. As to Owner Settling Defendant, Matters Addressed shall not include Settling Defendant Future Response Costs.

m. "Owner Settling Defendant" shall mean Donald R. Wishard, solely as successor executor on behalf of the Estate of Sarah A. Culp, and not individually.

n. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

o. "Parties" shall mean the United States, Settling Defendants and Owner Settling Defendant.

p. "Plaintiff" shall mean the United States.

q. "ROD" shall mean the Record of Decision issued by EPA for the Site on September 29, 1995 and any amendments thereto.

r. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

s. "Settling Defendant Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that Settling Defendants incur at or in connection with the Site after the date of lodging of this Consent Decree.

t. "Settling Defendant Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the Settling Defendants have paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

u. "Settling Defendants" shall mean CBS Corporation, a Delaware Corporation formerly known as Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania corporation formerly known as Westinghouse Electric Corporation ("CBS") and SPC Residual, LLC, successor by assignment to Susquehanna Pfaltzgraff Co. ("SPC").

v. "Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States, which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Decree. The Settling Federal Agencies include the United States Army, United States Department of the Navy, United States Air Force and the United States Defense Logistics Agency.

w. "Site" shall mean the Shriver's Corner Superfund Site, encompassing approximately 10 acres, located along State Route 394, also known as Shriver's Corner Road, in Straban Township, Adams County, Pennsylvania, and generally shown on the map included in Appendix A.

x. "State" shall mean the Commonwealth of Pennsylvania.

y. "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities, which includes, without limitation, EPA and the Settling Federal Agencies.

## **V. PAYMENT OF RESPONSE COSTS**

### **4. Payment by Settling Defendants and Owner Settling Defendant of EPA Past Response Costs.**

a. Within 30 days of the Effective Date of this Consent Decree, Settling Defendants CBS and SPC shall pay to EPA a total of \$239,480.00, plus an additional sum for Interest on \$420,000.00 calculated from April 22, 2004, through the date of lodging of this Consent Decree.

b. Within 30 days of the Effective Date of this Consent Decree, Owner Settling Defendant shall pay to EPA \$98,000.00.

c. Payment by Settling Defendants and Owner Settling Defendant shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Middle District of Pennsylvania following lodging of the Consent Decree.

d. At the time of payment, Settling Defendants and Owner Settling Defendant shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and to:

Docket Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and



Barbara Borden (3PM30)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Such notice shall reference EPA Region III, Site/Spill Identification Number 03D9, DOJ case number 90-11-5-1651, and the civil action number.

5. The total amount to be paid pursuant to Paragraphs 4.a and 4.b by Settling Defendants and Owner Settling Defendant shall be deposited in the EPA Hazardous Substance Superfund.

6. Payment by Settling Federal Agencies of EPA Past Response Costs.

a. As soon as reasonably practicable after the Effective Date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay EPA \$372,480.00, to reimburse EPA for EPA Past Response Costs and to resolve any claim or potential claim by Settling Defendants against Settling Federal Agencies for Settling Defendant Past Response Costs. The total amount to be paid pursuant to this Paragraph 6 by Settling Federal Agencies shall be deposited in the EPA Hazardous Substance Superfund.

b. If the payment to EPA required by this Paragraph 6.a is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the date of entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

7. Payment by Settling Federal Agencies of Future Response Costs. As soon as reasonably practicable after the Effective Date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay to Settling Defendant CBS \$182,411.00 to resolve any claim or potential claim by Settling Defendants against Settling Federal Agencies for Settling Defendant Future Response Costs at the Site, by ACH Electronic Funds Transfer in accordance with instructions provided by CBS.

8. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

## **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

9. Interest on Late Payments. If any Settling Defendant or the Owner Settling Defendant fails to make any payment under Paragraphs 4.a and 4.b by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

### **10. Stipulated Penalty.**

a. If any amounts due under Paragraph 4 are not paid by the required date, the non-paying Settling Defendant or Owner Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$5,000.00 per violation per day that such payment is late. If Owner Settling Defendant does not comply with the requirements set forth in Paragraph 27.c related to filing of the Easement with the Recorder of Deeds Office for Adams County, Owner Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$2,500.00 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph 10 shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Settling Defendant or Owner Settling Defendant making payment, the Site name, the EPA Region and Site Spill ID Number 03D9, DOJ Case Number 90-11-5-1651, and the civil action number. The Party making the payment shall send the check (and any accompanying letter) to:

U.S. EPA, Region III  
Attention: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

c. At the time of each payment made pursuant to this Paragraph, the Settling Defendant or Owner Settling Defendant making the payment shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). The Settling Defendant or Owner Settling Defendant making the payment shall also send notice of payment to:

Docket Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

d. Penalties shall accrue as provided in this Paragraph 10 regardless of whether EPA has notified Settling Defendants or Owner Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, the Settling Defendant or Owner Settling Defendant against whom such action is brought shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' or Owner Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. The obligations of Settling Defendants and Owner Settling Defendant to pay amounts owed to the United States under this Consent Decree are joint and several. In the event of the failure of any one or more of the Settling Defendants or Owner Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants or Owner Settling Defendant shall be responsible for such payments.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants or Owner Settling Defendant from payment as required by Section V or from performance of any other requirements of this Consent Decree.

## **VII. COVENANT BY PLAINTIFF**

15. Covenant Not to Sue Settling Defendants and Owner Settling Defendant by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants and Owner Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover EPA Past Response Costs. This covenant not to sue shall take effect for Settling Defendants upon receipt by EPA of all payments required of Settling Defendants by Section V, Paragraph 4 (Payment by Settling Defendants and Owner Settling Defendant of EPA Past Response Costs) and any amount due by Settling Defendants under Section VI (Failure to Comply with Consent Decree). This covenant not to sue shall take effect for Owner Settling Defendant upon receipt by EPA of all payments required of Owner Settling Defendant by Section V, Paragraph 4 (Payment by Settling Defendants and Owner Settling Defendant of EPA Past Response Costs), any amount due by Owner Settling Defendant under Section VI (Failure to Comply with Consent Decree), and performance of the requirements set forth in Paragraph 27.c below. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants and Owner Settling Defendant of their respective obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and Owner Settling Defendant and does not extend to any other person.

16. Covenant Not To Take Administrative Action Against Settling Federal Agencies. In consideration of payments by Settling Federal Agencies pursuant to this Consent Decree and Settling Federal Agencies' agreement not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law, EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), with respect to the Site. This covenant shall take effect upon the receipt of the payments required by Paragraph 6. This covenant extends only to the Settling Federal Agencies and does not extend to any other person.

17. Covenant by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law with respect to the Site, EPA Past Response Costs, EPA Future Response Costs, Settling Defendant Past Response Costs, Settling Defendant Future Response Costs, as defined herein, or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

## **VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Owner Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue Settling Defendants and Owner Settling Defendant by United States in Paragraph 15. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants and Owner Settling Defendant with respect to:

- a. liability for failure of Settling Defendants or Owner Settling Defendant to meet a requirement of this Consent Decree;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of EPA Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

#### **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

19. Settling Defendants and Owner Settling Defendant covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to EPA Past Response Costs, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions for which EPA Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth of Pennsylvania, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, relating to EPA Past Response Costs.

20. Subject to the reservations herein, the Settling Defendants covenant not to sue and agree not to assert any claims or causes of actions against the Settling Federal Agencies with respect to the Site, any release from the Site, or this Consent Decree. The Settling Defendants reserves, and this Consent Decree is without prejudice to:

a. claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

b. contribution or cost recovery claims against the Settling Federal Agencies in the event any claim is asserted by the United States or any other natural resource trustee against the Settling Defendants relating to liability for damages for injury to, destruction of, or loss of natural resources, and for costs of natural resource damages assessments, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States or other trustee against Settling Defendants; and

c. claims against the Settling Federal Agencies for failure to meet their payment requirements under this Consent Decree.

21. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

## **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

22. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants, Owner Settling Defendant, and Settling Federal Agencies are entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for Matters Addressed in this Consent Decree.

24. Each Settling Defendant and Owner Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant and Owner Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant and Owner Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants and Owner Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant by Plaintiff set forth in Section VII.



26. In the event of the failure of either of the Settling Defendants or the Owner Settling Defendant to make the payments required pursuant to Paragraph 4 of this Consent Decree, nothing in this Consent Decree prohibits the remaining Settling Defendant or Owner Settling Defendant from seeking contribution from the non-paying party.

## **XI. ACCESS AND INSTITUTIONAL CONTROLS**

27. Owner Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to the implementation of the remedy set forth in the ROD including, but not limited to, the following activities:

i. Monitoring, investigation, removal, remedial or other activities at the Site;

ii. Verifying any data or information submitted to the United States;

iii. Conducting investigations relating to contamination at or near the Site;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedy required by the ROD. Such restrictions include, but are not limited to:

i. limiting extraction of groundwater in the areas of the Site where groundwater contaminant concentrations exceed action levels defined in the ROD;

ii. limiting use of the areas of the Site where soil contaminant concentrations exceed action levels defined in the ROD; and

iii. limiting groundwater usage at the Site so as not to interfere with the Groundwater Remediation System or Community Water Supply System required by the ROD.

c. Owner Settling Defendant agrees to execute and record in the Recorder of Deeds Office for Adams County, the Easement attached to this Consent Decree as Appendix B, granting access rights and rights to enforce the land/water use restrictions required by the ROD to Settling Defendant CBS. Owner Settling Defendant shall, within thirty (30) days after the Effective Date of this Consent Decree, submit to EPA for review and approval with respect to such property a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the Easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Owner Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances). Within seven (7) days of EPA's approval and acceptance of the title evidence, Owner Settling Defendant shall record the Easement with Recorder of Deeds for Adams County. Within 30 days of recording the Easement, Owner Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. Owner Settling Defendant's compliance with this subparagraph does not incorporate into this Consent Decree the Easement set forth as Appendix B.

28. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## **XII. RETENTION OF RECORDS**

29. Until 10 years after the Effective Date of this Consent Decree, each Settling Defendant and Owner Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants and Owner Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants and Owner Settling Defendant shall deliver any such records to EPA. Settling Defendants and Owner Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants or Owner Settling Defendant assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants and Owner Settling Defendant shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' or Owner Settling Defendant's favor.

31. Each Settling Defendant and Owner Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

32. The United States acknowledges that Settling Federal Agencies 1) are subject to all applicable Federal record retention laws, regulations, and policies; and 2) have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### **XIII. NOTICES AND SUBMISSIONS**

33. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, Settling Defendants, and Owner Settling Defendant respectively.

#### **As to the United States:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DOJ # 90-11-5-1651)  
P.O. Box 7611  
Washington, D.C. 20044-7611

Chief, Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DOJ # 90-11-6-17089)  
P.O. Box 23986  
Washington, D.C. 20026-3986

Allison F. Gardner (3RC42)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Bhupendra Khona (3HS22)  
Remedial Project Manager  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Barbara Borden (3PM30)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

As to Settling Defendants:

Lindsay P. Howard, Esq.  
Babst Calland Clements Zomnir, P.C.  
Two Gateway Center  
Pittsburgh, PA 15222

William D. Wall, Esquire  
Vice President and Senior Counsel  
CBS Corporation  
11 Stanwix St., 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

Kathleen K. Kerns, Esq.  
Post & Schell, PC  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808

Louis J. Appell, Jr.  
Manager  
SPC Residual, LLC  
140 E. Market Street  
York, PA 17401

As to Owner Settling Defendant:

Richard H. Friedman, Esquire  
McNees Wallace & Nurick, LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166

Estate of Sarah A. Culp  
c/o Donald R. Wishard  
121 Auction Drive  
Bedford, PA 15522

**XIV. RETENTION OF JURISDICTION**

34. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XV. APPENDICES**

35. Appendices

a. "Appendix A" is the map of the Site and is attached to and incorporated into this Consent Decree.

b. "Appendix B" is the Easement and Declaration of Restrictive Covenants between Owner Settling Defendant and Settling Defendant CBS. Appendix B is attached to this Consent Decree for the limited purposes set forth in subparagraph 3.b.

**XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

36. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants and Owner Settling Defendant consent to the entry of this Consent Decree without further notice.

37. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

## **XVII. SIGNATORIES/SERVICE**

38. Each undersigned representative of a Settling Defendant to this Consent Decree, Owner Settling Defendant, the Chief, Environmental Enforcement Section, Environment and Natural Resources Division of the United States Department of Justice, and the Chief, Environmental Defense Section, Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

39. Each Settling Defendant and Owner Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants and Owner Settling Defendant in writing that it no longer supports entry of the Consent Decree.

40. Each Settling Defendant and Owner Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants and Owner Settling Defendant hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants and Owner Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

### **XVIII. FINAL JUDGMENT**

41. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the Settling Defendants, and the Owner Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006 .

\_\_\_\_\_  
United States District Judge



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. CBS Corporation, et al. (Civil Action No. \_\_\_\_\_), relating to the Shriver's Corner Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: \_\_\_\_\_

\_\_\_\_\_  
ROBERT E. LEFEVRE  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

THOMAS A. MARINO  
United States Attorney  
Middle District of Pennsylvania

MICHAEL BUTLER  
Assistant United States Attorney  
Middle District of Pennsylvania  
P.O. Box 309  
Scranton, PA 18501-0309

Date: \_\_\_\_\_

---

CHRISTINA B. PARASCANDOLA  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Date: 9/27/06

DONALD S. WELSH  
Regional Administrator, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date: 9/25/06

WILLIAM C. EARLY  
Regional Counsel  
Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date: 9/21/06

ALLISON F. GARDNER  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
U.S. v. CBS Corporation, et al. (Civil Action No. \_\_\_\_\_), relating to the Shriver's  
Corner Superfund Site.

FOR DEFENDANT CBS CORPORATION

Date: 9/20/06

\_\_\_\_\_  
Eric J. Sobczak  
Vice President, Associate General Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Babst Calland Clements & Zomnir  
Attention: Lindsay Howard, Esq.

Title: Attorney at Law

Address: Two Gateway Center  
Pittsburgh, PA 15222

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. CBS Corporation, et al. (Civil Action No. \_\_\_\_\_), relating to the Shriver's Corner Superfund Site.

FOR DEFENDANT SPC RESIDUAL, LLC

Date: \_\_\_\_\_

\_\_\_\_\_  
Louis J. Appell, Jr.  
SPC Residual LLC  
140 E. Market St.  
York, PA 17401

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Kathleen Kerns

Title: Counsel

Address: Post & Schell  
Four Penn Center  
1600 John F. Kennedy Blvd.  
Philadelphia, PA 19103

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
U.S. v. CBS Corporation, et al. (Civil Action No. \_\_\_\_\_), relating to the Shriver's  
Corner Superfund Site.

FOR DEFENDANT DONALD R.  
WISHARD O/B/O THE ESTATE  
OF SARAH A. CULP

Date: 9/12/06

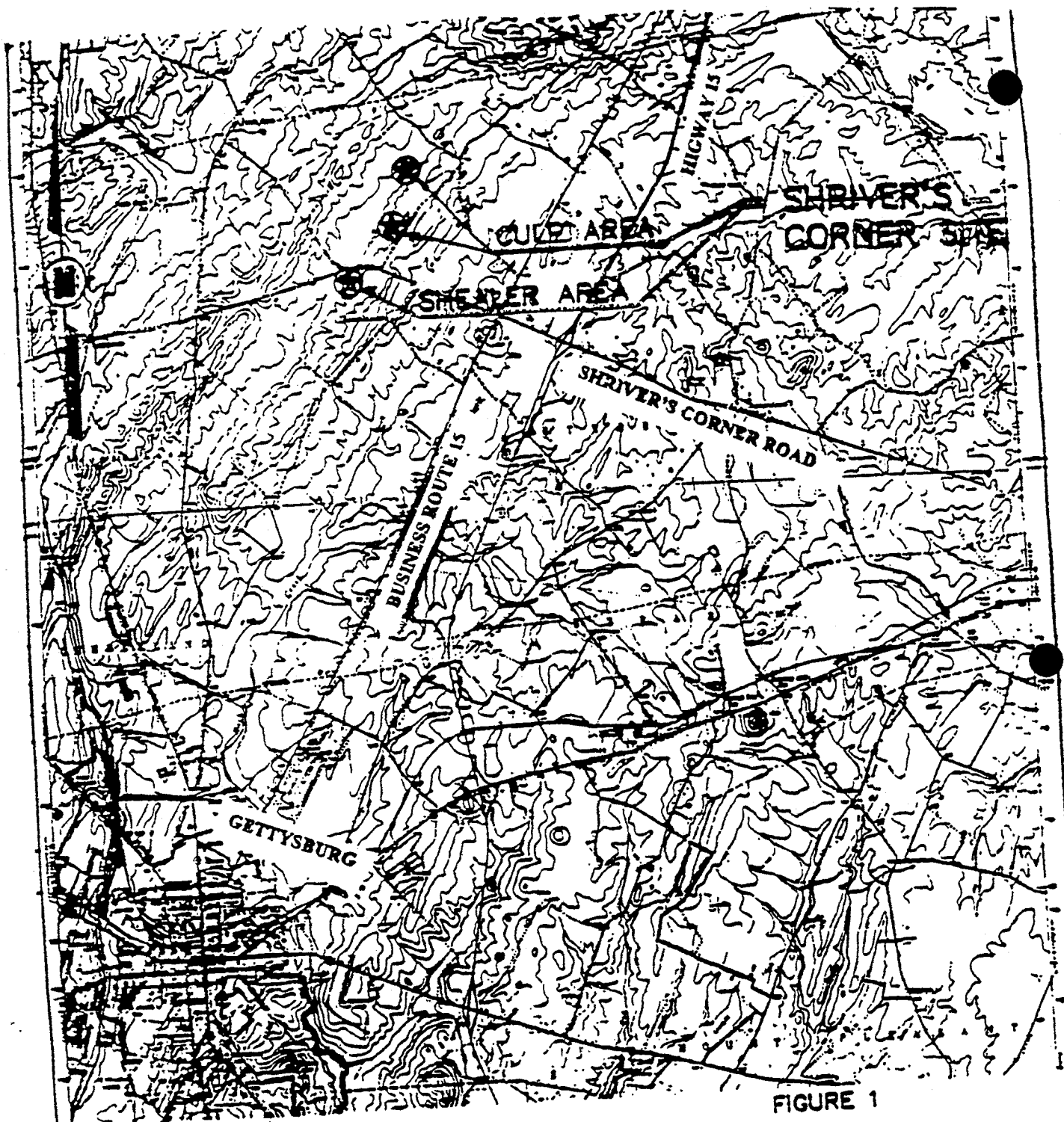
\_\_\_\_\_  
Donald R. Wishard, Executor of  
The Estate of Sarah A. Culp  
121 Auction Drive  
Bedford, PA 15522

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Richard H. Friedman, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108

## **APPENDIX A**





**SITE LOCATION MAP**  
 SHRIVER'S CORNER SITE RI/F3  
 STRABAN TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA

REFERENCE:  
 U.S.G.S TOPOGRAPHIC MAPS OF GETTYSBURG, PA  
 AND BIGLERVILLE, PA. BOTH PHOTOREVISED IN  
 1973. SCALE: 1" = 2000'.

AR305698



## **APPENDIX B**

## DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS is executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2006 by and between DONALD R. WISHARD, Executor of the Estate of Sarah A. Culp, ("Grantor"), having an address of 121 Auction Drive, Bedford, PA 15522, and, CBS Corporation, a Delaware corporation, f/k/a Viacom Inc., successor by merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation ("Grantee" or "CBS"), having an address of 11 Stanwix St., 3<sup>rd</sup> Floor, Pittsburgh, PA 15222.

### WITNESSETH:

WHEREAS, Grantor is the owner of approximately 190 acres of property located in Straban Township, Adams County, Commonwealth of Pennsylvania, known more particularly as Tax Parcel 38-G9-31 (the "Property");

WHEREAS, a deed conveying the Property to Francis R. Culp and Sarah A. Culp, husband and wife, was recorded on November 2, 1946 in Deed Book Vol. 175, Page 557 in the Adams County Office for the Recorder of Deeds;

WHEREAS, Francis R. Culp died May 2, 1973, thereby vesting Sarah A. Culp with fee title to the Property by operation of law;

WHEREAS, Sarah A. Culp died August 15, 1985, leaving her Last Will and Testament which gave her son William Culp the right to purchase the Property. William Culp did not exercise that right and died without issue;

WHEREAS, Anna S. Wishard became the sole heir to and executrix of the Sarah A. Culp Estate;

WHEREAS, Anna S. Wishard died March 19, 2005, leaving a Will designating her son Donald R. Wishard as her sole heir. Donald R. Wishard is now the Executor of the Estate of Sarah A. Culp, owner of the Property;

WHEREAS, a portion of the Property is part of the Shriver's Corner Superfund Site which is listed on the National Priority List, set forth at 40 C.F.R. Part 300, Appendix B, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9605;

WHEREAS, on September 29, 1995, the U.S. Environmental Protection Agency ("EPA") issued a Record of Decision ("ROD") that presented the selected remedial action for the Shriver's Corner Superfund Site, including construction and operation of a groundwater remediation system, provision of a community potable water supply system, installation of fencing, and imposition of land use restrictions;

WHEREAS, in July 1997, EPA issued an Administrative Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring CBS and Susquehanna Pfaltzgraff Company Inc. to implement aspects of the remedy selected in the ROD, including construction and operation of the groundwater remediation system and provision of the community potable water supply system ("Order");

WHEREAS, CBS pursuant to the Order has constructed and operates a groundwater remediation system on the Property, including a treatment building, underground groundwater conveyance lines, underground and overhead electric power

lines, telephone lines and control lines, recovery wells and monitoring wells  
("Groundwater Remediation System");

WHEREAS, CBS pursuant to the Order has constructed and operates a community potable water supply system on the Property, including a supply well, buried water conveyance lines, buried and overhead electric power, telephone and control lines, and a community supply chlorination building ("Community Water Supply System");

WHEREAS, Exhibit A attached hereto illustrates locations of the features of the Groundwater Remediation System and of the Community Water Supply System, and Exhibits A and B attached hereto illustrate locations of the site security fencing; and

WHEREAS, the parties hereto have agreed to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, for good and valuable consideration, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below.
2. Purpose: It is the purpose of this instrument to subject the Property to restrictive use covenants, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.
3. No Admission/Denial: Nothing in this Declaration of Restrictive Covenants shall be an admission of responsibility of any entity with respect to the Shriver's Corner Superfund Site, and Grantor specifically denies that it or any predecessor-in-interest is a

responsible party with respect to the Shriver's Corner Superfund Site pursuant to § 107(a) of CERCLA, 42 U.S.C. § 9607(a).

4. Restrictions on Use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor and its successors and assigns:

a. Groundwater. Groundwater on or underlying the Property shall not be used or extracted for any purpose, except with CBS's written approval. Approval shall not be unreasonably withheld where both of the following criteria are established by written proof: (A) the extraction or use clearly does not and will not affect the elevation or flow of groundwater underlying or in the vicinity of the Property, and (B) the extracted water meets or will be treated to meet Maximum Contaminant Levels under the federal Safe Drinking Water Act, the most stringent Medium Concentration Standards for use-aquifers under the Pennsylvania Land Recycling Program, and any other applicable safe drinking water standards.

b. Groundwater Remediation System. No owner of any portion of the Property identified as Area X on the attached Exhibit A shall interfere with, nor shall permit any invitee to interfere with, any of the features of the Groundwater Remediation System, of the operation of the Groundwater Remediation System, or of the rights of CBS, its successors or assigns, to maintain and operate the Groundwater Remediation System. There shall be no excavation or disturbance of earth within fifty (50) feet of any of the features of the Groundwater Remediation System, as illustrated on Exhibit A attached hereto, except with CBS's written approval. Approval shall not be unreasonably withheld where written plans for such excavation or disturbance are provided to CBS in advance and

show that there will be no interference with the features or operation or maintenance of the Groundwater Remediation System. In addition, the owner of any portion of the Property identified as Area X shall use reasonable efforts to ensure that any agent or lessee of owner not interfere with any of the features of the Groundwater Remediation System, of the operation of the Groundwater Remediation System, or the rights of CBS, its successors or assigns, to maintain and operate the Groundwater Remediation System, and that no excavation or disturbance of earth within fifty (50) feet of any of the features of the Groundwater Remediation System, as illustrated on Exhibit A attached hereto, shall occur except with CBS's written approval. Reasonable efforts shall include, at minimum, providing a copy of this Declaration to all lessees and contractors on Area X of the Property, incorporating the terms of Paragraphs 4 and 6 of this Declaration in any contract or lease regarding Area X of the Property, and naming CBS a third-party beneficiary of such contract or lease.

c. Community Water Supply System. No owner of any portion of the Property identified as Area Y on the attached Exhibit A shall interfere with any of the features of the Community Water Supply System, of the operation of the Community Water Supply System, or of the right of CBS, its successors or assigns, to maintain and operate the Community Water Supply System. There shall be no excavation or disturbance of earth within fifty (50) feet of any of the features of the Community Water Supply System, as illustrated on Exhibit A attached hereto, except with CBS's written approval. Approval shall not be unreasonably withheld where written plans for the excavation or disturbance are provided to CBS in advance and show that there will be no interference with the features or operation or maintenance of the system. In addition, the



owner of any portion of the Property identified as Area Y shall use reasonable efforts to ensure that any agent or invitee of the property owner not interfere with any of the features of the Community Water Supply System, of the operation of the Community Water Supply System, or of the right of CBS, its successors or assigns, to maintain and operate the Community Water Supply System, and that no excavation or disturbance of earth within fifty (50) feet of any of the features of the Community Water Supply System, as illustrated on Exhibit A attached hereto, shall occur except with CBS's written approval. Reasonable efforts shall include, at minimum, providing a copy of this Declaration to all lessees and contractors on Area Y of the Property, incorporating the terms of Paragraphs 4 and 6 of this Declaration in any contract or lease regarding Area Y of the Property, and naming CBS a third-party beneficiary of such contract or lease.

d. Construction of Buildings on the Property. No owner of any portion of the Property shall construct or permit the construction of any buildings on Area X of the Property unless such owner first provides to CBS a certified report from a licensed engineer or professional geologist setting forth detailed plans for mitigating any potential vapor intrusion into the building(s). CBS shall not unreasonably withhold approval if the previous criterion is met. Further, once any such building has been constructed, the owner of the portion of the Property on which construction is proposed shall provide to CBS a signed statement that such mitigation measures were actually included in the construction of the building(s).

e. Fencing. The site security fencing required by Section IX.C.1.b of the ROD to be constructed around the Upper Culp Area and Culp Junkyard Area, as illustrated on Exhibits A and B attached hereto, shall not be modified, removed or disturbed except with

CBS's written approval; provided that, fencing may be temporarily removed or disturbed by any owner of any portion of the Property as long as it is promptly restored and site security is not compromised. Approval shall not be unreasonably withheld where written plans for the modification, removal or disturbance are submitted to CBS in advance and show that the purpose and utility of the fencing will not be adversely affected.

5. Modification/Termination: There shall be no modification or termination of any of the covenants, restrictions, or any other term or condition set forth in this Declaration of Restrictive Covenants, unless by an instrument signed by CBS and such instrument is recorded in the Adams County Office of the Recorder of Deeds.

6. Access: Grantor hereby grants to the Grantee and its successors, assigns and authorized representatives, an irrevocable, permanent, continuing, and non-exclusive right of entry and access to the Property to undertake activities pursuant to the Order and to construct, monitor, modify, maintain, and remove the Groundwater Remediation System, Community Water Supply System and site security fencing.

7. Reserved Rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, and rights granted herein.

8. Affect on EPA: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

9. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

10. Run with Land: The restrictive covenants created by this Declaration, together with the burdens thereof, shall run with the land and be binding upon all present and future owners, lessees, licensees, easement holders, mortgagees or any other parties having or acquiring an interest in the Property. Each instrument conveying, granting, transferring, creating or assigning any interest in all or part of the Property shall impose as a limitation or restriction upon the conveyed, transferred or assigned land, all applicable restrictive covenants created hereby; provided, however, that any party, by accepting a deed, easement, lease, license, mortgage or any other instrument granting an interest in the Property, shall be deemed to accept the Property subject to the restrictive covenants herein contained and agrees for itself, himself/herself, his/her/its heirs, successors, administrators and assigns to be bound by each of these restrictive covenants jointly and severally.
11. Notice Requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS  
SUBJECT TO AN ENVIRONMENTAL PROTECTION  
EASEMENT AND DECLARATION OF  
RESTRICTIVE COVENANTS, DATED  
\_\_\_\_\_, 20\_\_\_\_, RECORDED IN THE PUBLIC LAND  
RECORDS ON \_\_\_\_\_, 20\_\_\_\_, IN BOOK  
\_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND  
ENFORCEABLE BY, THE GRANTOR, ITS  
SUCCESSORS OR ASSIGNS.**

Within thirty (30) days of the date any such instrument of conveyance is executed by Grantor, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

12. Enforcement: The restrictive covenants contained herein may be enforced by Grantee, or its successors and assigns. The covenants and restrictions set forth in this Declaration are for the benefit of Grantee, and its successors and assigns. The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

13. Covenants: Grantor hereby covenants to Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, and that the Grantor has a good and lawful right and power to sell and convey it or any interest therein.

14. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Estate of Sarah A. Culp  
c/o Donald R. Wishard  
121 Auction Drive  
Bedford, PA 15522

To Grantee:

Richard K. Smith  
Vice President, Environmental Remediation  
CBS Corporation  
11 Stanwix Street, 3rd Floor  
Pittsburgh, PA 15222

Copy to:  
Don Kornfield, Esquire  
17 North Church Street  
Waynesboro, PA 17268

Copy to:  
William D. Wall, Esquire  
Vice President and Senior Counsel  
CBS Corporation  
11 Stanwix Street, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

Either party may change the address for notices by providing notice of such change to the other party in writing.

15. General provisions:

a. Controlling law. The interpretation and performance of this instrument shall be governed by the laws the Commonwealth of Pennsylvania.

b. Liberal construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Successors. The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their

respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns

g. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

h. Counterparts. The parties may execute this instrument in counterparts, which shall each be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this 12th day of September, 2006.

DONALD R. WISHARD, Executor of  
The Estate of Sarah A. Culp

Grantor



COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF Franklin )

SS:

On this the 12th day of September, 2006, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Donald R. Wubard, of the [City/Town] of Bedford, County of Bedford, [State/Commonwealth] of Pennsylvania, known to me (or satisfactorily proven) to be the person(s) described in the foregoing instrument, and acknowledged that he/she/they executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires

NOTARIAL SEAL  
KIMBERLY S. RUNSHAW, NOTARY PUBLIC  
WAYNESBORO BORO, FRANKLIN COUNTY  
MY COMMISSION EXPIRES JUNE 22, 2007